

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2395 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURESHCHANDRA T TANKARIA

Versus

CENTRAL EXCISE AND CUSTOMS DEPARTMENT

Appearance:

1. Special Civil Application No. 2395 of 1993
MR MB GANDHI for Petitioner
Mr B B Naik for respondents

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 21/08/96

ORAL JUDGEMENT

This Special Civil Application has been filed by the petitioner-Sureshchandra T Tankaria under Article 226 of the Constitution of India seeking direction to reassess rent of the subject premises for the period

1982-87 and make payment on that basis.

2. The say of the petitioner is that his premises was rented out to the respondents in the year 1975 on a rent of Rs.1.25 per sq.ft. which was fixed at Rs. 1,349/- per month. As per the agreement, the rent was required to be revised at an interval of 5 years.

3. This application is opposed by Mr B B Naik, learned Addl.Central Government Standing Counsel on the ground of delay in approaching this Court. I have considererd this aspect and rejected the contention in an identical matter i.e. Special Civil Application No.2397/93.

4. It is not in dispute that as per the certificate issued by the CPWD dated 24.10. 1994 they have assessed rent of the subject premises between Rs.2,689/- and Rs.3,659/-. The assessment has been made in accordance with the recognised principles of valuation and as per the prevailing market rate in the locality respectively. It would, thus, be convenient to fix rent of the subject premises taking average of the aforesaid two figures given in the certificate which comes ro Rs.3,174/-. It is stated that certain amount has been paid to the petitioner in excess under the interim orders of this Court.

5. In view of the aforesaid this Special Application has is allowed. The respondents are directed to pay rent to the petitioner for the year 1982-87 in accordance with the certificate dated 24.10.1994 fixing average rent at Rs. 3,174/- per month after making adjustment of the amount paid in excess or short. If excess amount has been paid, the same shall be adjusted against rent of the subsequent years. The respondents shall undertake the exercise of calculation and pay the amount due, if any, to the petitioner within a period of two months from the date of receipt of the writ.

Rule is made absolute to the aforesaid extent with no order as to costs.

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FURTHER ORDER

After pronouncement of the judgment, Mr B B Naik, learned Addl.Central Government Standing Counsel submits that the order fixing the rent for the period i1982-87 may be stayed for a period of 4 weeks with a view to approach the higher forum. This prayer is being opposed by Mr M B

Gandhi, learned Advocate for the petitioners. However, it is directed that this order will not be given effect for a period of 3 weeks.

Date: 21.8.1996 (N N Mathur, J.)